

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0391 CG
Charity Gaming
Denial of Charity Gaming License

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Charity Gaming-Lease of facilities and personal property.

Authority: IC § 4-32-9-20; IC § 6-8.1-5-1; Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993)

Petitioner protests Department's denial of license based on the amount Petitioner is paying per evening's rental of the bingo location.

II. Charity Gaming-Continuous Existence.

Authority: 45 IAC 18-2-1; IC § 4-32-6-20; IC § 6-8.1-5-1; Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993)

Petitioner protests Department's denial of license based on Department's finding that the organization was not in existence for the prerequisite 5 years.

III. Charity Gaming-Operator Membership Requirements.

Authority: IC § 4-32-9-28; IC § 6-8.1-5-1; Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993)

Petitioner protests Department's denial of license based on Department's finding that operators on Petitioner's application did not meet the statutory requirements.

STATEMENT OF FACTS

Petitioner, Concerned Senior Citizens –Friends of Charity, applied for a Charity Gaming license on August 20th, 2000. Petitioner was notified by Department's letter of August 31st, 2000 that the application was denied. Petitioner resubmitted the application for a Charity Gaming license with additional documentation and corrections and Petitioner was again denied by the Department by letter dated September 27, 2000. Petitioner filed a timely appeal of this denial and a hearing was held on January 23rd, 2001.

I. Charity Gaming-Lease of facilities and personal property.

DISCUSSION

The Petitioner protests the Department's denial of their license application for exceeding the rent limitation.

Pursuant to IC § 4-32-9-20, if a facility is leased for an allowable event the rent may not exceed two hundred dollars (\$200) per day. Based upon the lease submitted by the organization, the per day lease is \$250 exceeding the two hundred dollars limitation by \$50 per bingo day.

The Petitioner only offered a statement in the hearing that the lease amount included tables and chairs as well as the hall, and it was his understanding that an additional \$50 can be charged per night's rental in this instance. The lease (Department's Exhibit B) does include a requirement for the Lessor to provide tables and chairs in the hall, but does not segregate this use from the property rental, nor is the \$250 rental amount itemized to reflect petitioner's contention. Petitioner does not cite any statutory support for petitioner's contention that the \$200 cap can be contravened by the lease of equipment in conjunction with the property lease.

The Department finds that the Petitioner exceeded the limitation on rental fees as imposed by IC § 4-32-9-20. Pursuant to IC § 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

FINDING

The Petitioner's protest is denied.

II. Charity Gaming-Continuous Existence.

DISCUSSION

The Petitioner protests the Department's revocation of its qualification application for an Indiana Charity Gaming License based upon the Department's determination that the Petitioner had not been in continuous existence for at least five years pursuant to IC § 4-32-6-20(1)(c). The Petitioner contends that it had been in existence for at least five (5) years at the time their application was filed.

45 IAC 18-2-1 states:

(a) To obtain a license to operate an allowable event, a qualified organization must submit a written application on a form prescribed by the department.

(b) The application shall include the following information:

* * *

(6) Sufficient facts for the department to determine that the organization is a qualified organization, including, but not limited to, the following:

(C) **Proof that the organization has been in existence for five (5) or more years.** (Emphasis added).

Indiana Code section 4-32-6-20(a) states:

(a) "Qualified organization" means:

(1) a bona fide religious, educational, senior citizens, veterans, or civic organization *operating* in Indiana that:

(A) operates without profit to the organization's members;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) has been continuously in existence in Indiana for at least five (5) years or is affiliated with a parent organization that has been in existence in Indiana for at least five (5) years; ...*(emphasis added)*

The Department gives the term "operating" its ordinary and plain meaning. Operating is defined by Webster's Dictionary as, "adj. of, relating to, or used for or in operations." The word "operate" means, "1: to bring about: EFFECT 2 a: to cause to function: WORK b: to put or keep in operation..." Webster's New Collegiate Dictionary (1979).

The Department's witness stated under oath, the Petitioner has not been continuously operating for a period of five years as is required. The Petitioner's testimony and minutes of the organization's meetings are available to support the Petitioner's protest. The

Petitioner filed with its CG-1 (Department's Exhibit B) the following documentation to support its contention of existence:

Minutes from Concerned Senior Citizen's Meeting- February 18th, 1995
Minutes from Concerned Senior Citizen's Meeting- May 18th, 1999
Minutes from Concerned Senior Citizen's Meeting- March 23rd, 2000
Minutes from Concerned Senior Citizen's Meeting- August 24th, 2000

This documentation, submitted as Department's exhibit B, shows this organization was organized on February 18th, 1995 with the intention to "further the causes of health and well being of seniors 55 years and older." Concerned Senior Citizens-Friends of Charity, constitution, article 4 (Department's Exhibit B). Aside from the adoption of the constitution and election of officers, the only business conducted at this organizational meeting was the delegation of three members to look into the legal requirements for the organization to conduct charity gaming, with the subsequent meeting's minutes consistently discussing as the only substantial order of business the initiation of a charity gaming operation. As can be seen in the chronology above, after the group came into existence, no meetings took place for four years. The three meetings in the organization's 4th and 5th year of existence concerned themselves with the required legal filings for obtaining a charitable gaming license-demonstrating that the organization's existence was solely for the purpose of charity gaming operations. Furthermore, in the hearing of January 23rd, 2001, petitioner stated:

Petitioner: We had one [a meeting] scheduled in '97, like I said, but we did not hold it because we couldn't find a place to have the meeting.

Q. What about 1996 or 1997 or '98?

Petitioner: There was no reason to have a meeting. We had nothing to discuss.

Q. Okay. So you carried on no charitable purpose, you had no meetings, you did nothing—

Petitioner: No sir.

Q. —for those three years?

Petitioner: No.

Transcript of January 23rd, 2001 hearing, page 27.

Therefore, the Department finds that the Petitioner was not operating for the requisite period as provided by Indiana law. Pursuant to IC § 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim that the entity does not qualify for a license is valid. The burden of proving that the findings are wrong rests with the person

against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

FINDING

The Petitioner's protest is denied.

III. Charity Gaming-Operator Membership Requirements.

DISCUSSION

One of the operators listed on the CG-2 application of August 20th, 2000 was listed as an operator even though she had not been a member for at least one (1) year as is required by IC § 4-32-9-28. Indiana Code section 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event."

Pursuant to IC § 6-8.1-5-1, the Department's findings in this matter constitute prima facie evidence that the Department's findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

Petitioner does not provide any evidence either written or oral to contradict the Department's findings that the Petitioner's proposed operator has not been a member of the organization for at least one (1) year in violation of IC § 4-32-9-28.

FINDING

The Petitioner's protest is denied.

JM/MR 010903